

REMARKS

Claims 1-20 are pending in the application and have been rejected in Paper No. 20040506.

After reviewing the rejections, Applicants asked the undersigned firm to conduct a second interview the Examiner. Applicants thank the Examiner for participating in the telephone interview on September 7, 2004. Based upon the interview, Applicants provide the following comments.

Claim Rejections – 35 U.S.C. § 102

Claims 1-20 are rejected as being anticipated by Kuhara (US 5,787,215).

Applicants respectfully request that this rejection be withdrawn. It was discussed during the interview, that on page 4 of the Office Action the following statement is made “even though, the Kuhara reference does not disclose the specific driving element region, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the driving element in the second region”. This statement admits that this reference fails to disclose each and every element of the claims. In addition, Applicants submit that the cited Kuhara patent fails to disclose the claimed arrangement of a light emitting device, driving element, and monitoring light receiving element, as discussed in the previous interview. Therefore, the anticipation rejection is improper. As such, Applicants respectfully request withdrawal of this rejection.

Furthermore, Applicants respectfully dispute the obviousness comments set forth in the Office Action. Applicants submit that the standard for setting forth a *prima facie* case of obviousness is not whether it would be “obvious to try” a proposed modification. Rather a suggestion and reasonable expectation of success by any asserted modification must be

demonstrated in the cited prior art itself. Such can not be based properly on Applicants' disclosure. The cited reference wholly fails to convey the required suggestion and reasonable expectation of success to those of ordinary skill in the art, and therefore does not support an obviousness rejection. For these reasons, also, the present rejection must be withdrawn.

CONCLUSION


Applicants respectfully submit that the above remarks obviate the outstanding rejections in this case, thereby placing the application in condition for immediate allowance. Allowance of this application is earnestly solicited.

If any fees under 37 C. F. R. §§ 1.16 or 1.17 are due in connection with this filing, please charge the fees to Deposit Account No. 02-4300, Order No. 033035M088.

Respectfully submitted,

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